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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

ARNEL FRANZUELA, an individual, Plaintiff, v. TRANDES CORPORATION, a corporation; MICHAEL MCKINNEY, an individual; and DOES 1-45, inclusive, Defendants.	Case No. 08-CV-0395-WQH-CAB **DEFENDANTS TRANDES CORPORATION AND MICHAEL MCKINNEY'S ANSWER TO PLAINTIFF'S COMPLAINT**

Defendants TRANDES CORPORATION ("Trandes") and Michael McKinney ("McKinney") (collectively, "Defendants"), for themselves alone, hereby respond to plaintiff's complaint filed herein as follows:

1. In response to paragraph 1 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations and, on that basis, deny the allegations contained therein.

2. In response to paragraph 2 of the Complaint, Defendants admit that Trandes is a corporation doing business in the State of California, County of San Diego.

3. In response to paragraph 3 of the Complaint, Defendants admit the allegations contained therein.

4. In response to paragraph 4 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and

specifically each and every allegation contained in said paragraph.

5. In response to paragraph 5 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

6. In response to paragraph 6 of the Complaint, Defendants admit that plaintiff began his employment with Trandes on approximately November 6, 2006, as an Electronic Technician, Level II, at United States Naval Base Point Loma.

7. In response to paragraph 7 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

8. In response to paragraph 8 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

9. In response to paragraph 9 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

10. In response to paragraph 10 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

11. In response to the first sentence of paragraph 11 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. In response to the second sentence of paragraph 11 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

12. In response to the first sentence of paragraph 12 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein. As to the second sentence of paragraph 12, Defendants admit that plaintiff had asked McKinney whether he was to work on the day following Thanksgiving Day. Except as expressly admitted and except as to the

allegations in the second sentence of paragraph 12, Defendants deny generally and specifically each and every allegation in said paragraph.

13. In response to the first sentence of paragraph 13 of the Complaint, Defendants deny generally and specifically each and every allegation in said paragraph. As to the second sentence of said paragraph, Defendants admit only that during the course of the conversation between McKinney and plaintiff, McKinney stated, "Don't worry, I'll take care of it," or words to that effect. Except as expressly admitted and except as to the admitted portion of the second sentence of paragraph 13, Defendants deny generally and specifically each and every allegation in said paragraph.

14. In response to the first sentence of paragraph 14 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. In response to the second sentence of paragraph 14 of the Complaint, Defendants admit that plaintiff was required to sign his time sheets in order to verify their accuracy. Except as expressly admitted and except as to the admitted portion of the second sentence of paragraph 14, Defendants deny generally and specifically each and every allegation in said paragraph.

15. In response to paragraph 15 of the Complaint, Defendants deny generally and specifically each and every allegation in said paragraph.

16. In response to the first sentence of paragraph 16 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. In response to the second sentence of paragraph 16 of the Complaint, Defendants deny generally and specifically each and every allegation in said sentence.

17. In response to the first sentence of paragraph 17 of the Complaint, Defendants admit only that McKinney told plaintiff that, if he had some sort of a problem with his time sheet, to ask Tim Durin, who at that time was McKinney's supervisor. In response to the second sentence, Defendants deny generally and specifically each and every allegation in said sentence. Except as expressly admitted and except as to the admitted portion of the first sentence of

paragraph 17, Defendants deny generally and specifically each and every allegation in said paragraph.

18. In response to the first sentence of paragraph 18 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. In response to the second sentence of paragraph 18 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein. In response to the third sentence of paragraph 18 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

19. In response to the first sentence of paragraph 19 of the Complaint, Defendants deny generally and specifically each and every allegation in said sentence. In response to the second sentence of said paragraph, Defendants admit that McKinney said the stated words, or words to that effect. Except as expressly admitted and except as to the admitted portion of the second sentence of paragraph 19, Defendants deny generally and specifically each and every allegation in said paragraph.

20. In response to paragraph 20 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

21. In response to the first sentence of paragraph 21 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein. In response to the second sentence of paragraph 21 of the Complaint, Defendants admit only that McKinney was the person who advised plaintiff of the decision to terminate him. Except as expressly admitted and except as to the admitted portion of the second sentence of paragraph 21, Defendants deny generally and specifically each and every allegation in said paragraph.

22. In response to the first sentence of paragraph 22 of the Complaint, Defendants admit that when McKinney told plaintiff that his performance was not satisfactory, or words to that effect. In response to the second sentence of said paragraph, Defendants admit only that plaintiff had never received a written warning or reprimand. In response to the third sentence of

said paragraph, Defendants admit that McKinney had conversations with Ms. Darden regarding plaintiff's poor work performance. In response to the fourth sentence of paragraph 22 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. Except as expressly admitted and except as to the admitted portions of the first, second, and third sentences of paragraph 22, Defendants deny generally and specifically each and every allegation in said paragraph.

23. In response to the first sentence of paragraph 23 of the Complaint, Defendants admit that plaintiff's termination letter stated that he was being terminated as a result of his "inability to sustain a satisfactory level of performance in [his] assigned duties." In response to the second sentence of paragraph 23 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. Except as expressly admitted and except as to the admitted portion of the first sentence of paragraph 23, Defendants deny generally and specifically each and every allegation in said paragraph.

24. In response to the first sentence of paragraph 24 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said sentence. In response to the second sentence of paragraph 24 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

25. In response to paragraph 25 of the Complaint, Defendants reallege and incorporate herein their responses above to paragraphs 1 through 24 of the Complaint as if fully set forth.

26. In response to paragraph 26 of the Complaint, Defendants deny generally and specifically each and every allegation (which are merely legal conclusions) contained therein as overly broad and simplistic.

27. In response to paragraph 27 of the Complaint, Defendants lack knowledge or information sufficient to admit or deny such allegations, and on that basis deny generally and specifically each and every allegation contained in said paragraph.

28. In response to paragraph 28 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

29. In response to paragraph 29 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

30. In response to paragraph 30 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

31. In response to paragraph 31 of the Complaint, Defendants reallege and incorporate herein their responses above to paragraphs 1 through 30 of the Complaint as if fully set forth.

32. In response to paragraph 32 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

33. In response to paragraph 33 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

34. In response to paragraph 34 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

35. In response to paragraph 35 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

36. In response to paragraph 36 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

37. In response to paragraph 37 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

38. In response to paragraph 38 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

39. In response to paragraph 39 of the Complaint, Defendants deny generally and specifically each and every allegation contained therein.

WITHOUT WAIVING ANY OF THE FOREGOING, ANSWERING DEFENDANT, FOR ITS AFFIRMATIVE DEFENSES TO THE COMPLAINT, ALLEGES AS FOLLOWS:

The following separate affirmative defenses are asserted to the Complaint, and to each purported claim therein brought against Defendants. By pleading these affirmative defenses, Defendants do not assume the burden of proving any fact, issue, or element of a cause of action where such burden rests with plaintiff. Moreover, nothing stated herein is intended or shall be construed as a concession that any particular issue or subject matter is relevant to plaintiff's allegations.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim for Relief)

The Complaint, and each and every purported claim for relief therein, fail to state facts sufficient to constitute claims for relief against Defendants.

SECOND AFFIRMATIVE DEFENSE

(Lack of Jurisdiction)

All state law claims are barred due to exclusive federal jurisdiction.

THIRD AFFIRMATIVE DEFENSE

(No Authority)

Any improper, illegal or intentional discriminatory actions or statements any agent, servant, or employee of Trandes were contrary to and in violation of Trandes' policies and were never actually or apparently authorized by Trandes, and if undertaken were undertaken without its knowledge and were never ratified, consented to or approved by Trandes.

FOURTH AFFIRMATIVE DEFENSE

(Unclean Hands)

The Complaint, and each and every purported claim for relief therein, is barred as a result of plaintiff's unclean hands by reason of his poor and inefficient performance.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff, though under a duty to do so, has failed and neglected to mitigate his alleged damages, and therefore, cannot recover against Defendants, whether as alleged or otherwise.

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SIXTH AFFIRMATIVE DEFENSE

(Workers' Compensation Preemption)

The allegations of the Complaint arise out of the employment relationship between plaintiff and Trandes. As a result, some or all of the claims for damages in the Complaint are barred by the provisions of California Labor Code section 3200 *et seq.*, the workers' compensation laws, which provide plaintiff's exclusive remedy. Therefore, this Court lacks jurisdiction over any and all such claims.

SEVENTH AFFIRMATIVE DEFENSE

(Legitimate Business Purpose)

Some or all of the claims for damages in the Complaint are barred in that all decisions and actions of Defendants with respect to the subject matter of this lawsuit were undertaken in good faith, in the absence of malicious intent, and constituted a lawful, proper, and justified means to further its legitimate business and economic interests.

EIGHTH AFFIRMATIVE DEFENSE

(Managerial Privilege or Immunity)

Some or all of the claims in the complaint are barred by the doctrine of managerial privilege or immunity.

NINTH AFFIRMATIVE DEFENSE

(Constitutional Privilege)

Some or all of the claims for damages in the Complaint are barred because the statements and/or acts complained of are privileged under the Constitution of the United States and the Constitution of the State of California.

TENTH AFFIRMATIVE DEFENSE

(Privilege)

The statements complained of, if any were made, were made to interested persons without malice and, therefore, Defendants are not liable pursuant to the qualified privilege under California Civil Code section 47(c).

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ELEVENTH AFFIRMATIVE DEFENSE

(Truth)

The statements complained of, if any were made, were not false but were true and correct. By so alleging, Defendants do not concede and indeed specifically deny, that the burden of proof on the issue of truth/untruth in this defamation action rests with Defendants. Defendants believe and contend in this regard that plaintiff bears, and constitutionally must bear, the burden of establishing that Defendants published an untrue statement of fact concerning plaintiff which was defamatory.

TWELFTH AFFIRMATIVE DEFENSE

(Opinion)

The statements complained of, if any were made, constitute non-actionable opinions or statements incapable of being proved true or false, and are therefore not statements of actionable fact. By so alleging, Defendants do not concede, and indeed specifically deny, that the burden of proof on the issue of whether the statements are factual rests with Defendants. Defendants believe and contend in this regard that plaintiff bears, and constitutionally must bear, the burden of establishing that Defendants published an untrue statement of fact concerning plaintiff which was defamatory.

THIRTEENTH AFFIRMATIVE DEFENSE

(Lack of Special Damages)

Any alleged defamation is not defamatory on its face and Defendants are informed and believe, and thereon allege that plaintiff cannot maintain his cause of action because he has not suffered any special damages.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

Punitive damages such as those claimed by plaintiff are unconstitutional under the United States Constitution.

WHEREFORE, Defendants pray for judgment as follows:

1. That all relief requested in the Complaint be denied;

2. That plaintiff take nothing by virtue of this action;

3. For costs of suit and attorneys' fees incurred herein; and

4. For such other and further relief as the Court may deem proper and just.

DATED: March 10, 2008

Respectfully submitted,

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

By: /s/ Nykia J. Wilson
Phillip L. Kossy
Nykia J. Wilson
Attorneys for Defendants TRANDES CORPORATION and MICHAEL MCKINNEY

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